



GOVERNOR GREG GIANFORTE
DIRECTOR BRENDAN BEATTY

MEMORANDUM

TO: Revenue Interim Committee

FROM: David R. Stewart, Chief Legal Counsel *DAS*

DATE: November 18, 2024

SUBJECT: Department of Revenue Major Case Update

MONTANA SUPREME COURT

William and Ellen Solem: This matter concerns the Department's 2008 mass appraisal of lakefront properties in Flathead County. In 2010, the Solems sued the Department seeking \$450 that they believed they had overpaid in taxes. In 2013, Solems amended their complaint to allege that the Department's method of valuing waterfront footage based on a "flat rate per foot" was improper and illegal. In 2016, the court certified the suit as a class action, consisting of "lakefront property owners in Neighborhood 800" who had paid taxes under protest since the last assessment cycle.

The District Court determined that the Department's mass appraisal methodology and valuation model was unfair and unconstitutional. The District Court awarded Solems damages, attorneys' fees under the private attorney general doctrine, and costs under the insurance exception. The parties stipulated to a final judgment, reserving their appellate rights.

The Department appealed the District Court's orders on January 10, 2023. Solems cross-appealed on January 17, 2023. On September 27, 2023, the Supreme Court classified the matter for submission on briefs to a five-justice panel.

On September 24, 2024, the Supreme Court reversed the District Court and remanded for proceedings consistent with the opinion. The Supreme Court held that the District Court erred by substituting its judgment for that of the Department and that the record established that the Department employed a consistent, accepted process for arriving at market value. The Court further held that the Department's methodology did not run

afoul of the Constitution because the Department's methodology was adequate and not arbitrary.

On October 9, 2024, Solems petitioned the Supreme Court for rehearing. The Department filed its objection on October 22, 2024. The Court denied Solems' petition for rehearing on November 7, 2024.

STATE DISTRICT COURT

Thomas Powers and Cindra Lord-Powers and Ryan Swenson and Elizabeth Swenson, et al. v. State of Montana and Department of Revenue: On October 21, 2024, Mr. and Mrs. Powers and Mr. and Mrs. Swenson, as Plaintiffs, filed suit in Butte-Silver Bow County against the State of Montana and the Department alleging that the "state" and the Department have failed to equalize and adjust all taxable property in the state as required by Article VIII, Section 3 of the Montana Constitution and §15-9-101, MCA. The suit requests the Court (1) certify the matter as a class action suit; (2) issue declaratory judgment(s) under various legal theories; and (3) grant supplemental relief to Plaintiffs, including attorneys' fees and costs. The Department's answer is due December 10, 2024.

Strobhar v. State of Montana, MDOR, MDOR Director Brendan Beatty (official capacity), State Auditor Troy Downing (official capacity): Mr. Strobhar sued the Department and Co-Defendants in Montana First Judicial District Court, regarding nonresident investment adviser representatives and securities salespersons annual registration fees, which the State Auditor administers pursuant to 30-10-209, MCA, which was amended in 2019 by House Bill 694 (HB 694). The Department filed an Answer to Plaintiff's First Amended Complaint and Demand for Jury Trial on April 4, 2024. On April 10, 2024, the Department and Co-Defendants filed their responses to Plaintiff's First Set of Discovery Requests. On May 1, 2024, the Court adopted a Civil Scheduling Order for the case, which sets the pretrial deadlines for the matter and contemplates trial in mid-2026. Discovery is currently on going.

Eagle Bear: On December 2, 2019, Eagle Bear filed a complaint with the Montana Ninth Judicial District Court challenging Montana's lodging facility use tax and sales tax as applied to Eagle Bear's campground, which is located within the Blackfeet Indian Reservation. Eagle Bear asserts that federal law preempts the taxes and that the taxes violate equal protection. Eagle Bear also sued the Blackfeet Nation in US District Court, Great Falls Division. As a result, the parties stayed the Montana District Court matter pending the outcome of the US District Court matter. On December 8, 2023, the U.S. District Court issued its Order which granted summary judgment to the Blackfeet

Nation, denied numerous Eagle Bear and third-party motions, and closed the matter. Since the Order's appeals deadlines have not concluded, the Montana District Court matter is still stayed.

On May 23, 2022, Eagle Bear filed a Chapter 11 bankruptcy petition with the United States Bankruptcy Court, District of Montana. The Department is not currently involved as a party in the bankruptcy matter. There is no additional information on this case currently.

Boardwalk Properties, Inc./Michael Delaney and Ileana Indreland: In June 2021, Boardwalk Properties sued the Department in the Eighteenth Judicial District Court, Gallatin County, challenging the recent statutory amendments to § 16-4-213, MCA, governing resort area all-beverages licenses, specifically that accommodation units may not be located within the boundaries of a quota area in order to qualify toward the required total for the potential issuance of additional resort retail all-beverages licenses (House Bill 705 (2021)). The lawsuit asserts that the amended statute violates both the state and federal constitutions (retrospective legislation, equal protection, due process, and takings). Discovery has closed and on March 8, 2024, both parties filed cross-motions for summary judgment. Oral argument was held on August 21, 2024. The Department is awaiting the Court's decision.

Reeds v. MDOR: In July 2023, Tom and Jerry Reed sued the Department in the First Judicial District Court, challenging the residency requirements set forth in §16-12-203(2)(g), MCA, as applied to them, who are not residents of Montana. The Reeds seek declaratory and injunctive relief under the Montana Constitution, Art. II, Sections 3, 4, 17, as applied to them, claiming that the Department should be enjoined from denying them the opportunity to apply based on their residency status. On September 11, 2023, the District Court denied their motion for a preliminary injunction because the Reeds failed to establish that their "irreparable harm" is likely. The Court noted that the Reeds claims are conditional on the outcome of an action pending at the Department's Office of Dispute Resolution (ODR) against marijuana licensee Therapeutic Essentials, LLC. The Reeds admit that they invested in, and operate, Therapeutic Essentials' licenses, and the Department asserted that the licensee failed to properly disclose the Reeds and others and that the licensee unlawfully allowed the Reeds and others to possess the licensee without authorization. The Department filed a motion to dismiss the Reeds' action in District Court that has been fully briefed and is awaiting a decision.

On February 29, 2024, the ODR granted the Department's motion on summary judgment, which denied and revoked Therapeutic Essentials' licenses for allowing

unauthorized persons to possess control of its licenses, for making false statements, and for not providing fingerprinting and background checks for individuals required to be background checked. The Department filed a Notice of Administrative Decision with the District Court and attached the Order Granting Summary Judgment.

Montana Sky Networks/Montana Sky West v. Montana Department of Revenue: Montana Sky Networks, Inc. ("MSN") and Montana Sky West, LLC, ("MSW") are telecommunications services providers who dispute their Class 13 classification and central assessment arguing that they are separate and distinct businesses and do not operate in more than one county or more than one state. Petitioners also dispute their central assessment as one operating unit. The Department contends it properly classified and centrally assessed MSN and MSW as one integrated operating unit. The matter has gone from informal review in the Department, through the Office of Dispute Resolution, and the current matter arises from a December 2022 Petition for Declaratory Judgment in the Nineteenth Judicial District Court in Lincoln County. Discovery for the matter has closed, cross-motions for summary judgment have been filed and fully briefed, and oral argument on the motions was held on January 2, 2024 in Libby.

As of the date of this update, the District Court Judge has not ruled on the pending cross-motions for summary judgment. A bench trial is currently scheduled for December 5, 2024, in Libby, Montana.

Billings Generation Inc., Orndorff, Roberts and Smith v. Montana Department of Revenue: Taxpayers dispute the Department's denial of deductions for expenses claimed for interest accrued from 1997 through 2020 on alleged loans and whether the associated funds were properly classified as straight debt with deductible interest, or if these transactions constituted a capital infusion. Taxpayers appealed the Department's assessment to the Office of Dispute Resolution (ODR) and subsequently requested to bypass ODR. Once at MTAB, taxpayers filed a Petition for Interlocutory Adjudication at the First Judicial District Court in Lewis & Clark County on June 18, 2024. The Department filed a Motion to Dismiss the Petition on July 24, 2024, asserting the Court lacks subject matter jurisdiction on taxpayers' claims as they exceed the scope of an interlocutory adjudication and instead require the court to decide disputed questions of material facts, which must be decided by MTAB pursuant to § 15-2-305, MCA. The matter was briefed and the District Court granted the Department's Motion to Dismiss on October 7, 2024.

MONTANA TAX APPEAL BOARD

MT Sun, LLC: MT Sun appealed a decision by the Yellowstone County Tax Appeal Board to the Montana Tax Appeal Board relating to the 2023 tax year. The underlying litigation concerns the assessed value of MT Sun's personal property. Discovery is ongoing. The hearing has been rescheduled for March 10-13, 2025.

Calumet Montana Refining, LLC: Calumet appealed the Cascade County Tax Appeal Board's November 13, 2023 decision upholding the Department's 2023 valuation to the Montana Tax Appeal Board and on May 17, 2024 also appealed the Cascade County Tax Appeal Board's April 29, 2024 decision upholding the Department's revised 2022 valuation. No hearing date for either matter has yet been scheduled as the parties continue in good faith to exchange information regarding the assessments for these two years.

BANKRUPTCY COURT

Timothy Blixseth: Mr. Blixseth filed an Adversary Complaint against the Department of Revenue in the United States Bankruptcy Court, District of Nevada, on December 23, 2021. Mr. Blixseth seeks an undisclosed amount of damages against the Department for the filing of an involuntary bankruptcy petition in 2011.

On July 27, 2022, the Bankruptcy Court granted the Department's Motion to Dismiss as to the punitive damages. However, the Bankruptcy Court denied the Department's Motion as to costs, attorneys fees, and proximate damages. The Department filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) Bankruptcy Appellate Panel on August 10, 2022. On August 24, 2022, Mr. Blixseth filed a Notice of Cross-Appeal challenging the Bankruptcy Court's dismissal of his claim for punitive damages.

On March 31, 2023, the Department filed its opening Appellate Brief and on May 31, 2023, Mr. Blixseth filed his answering brief. The Ninth Circuit heard oral argument on the appeal on January 10, 2024, in Pasadena, CA.

Additionally, on June 1, 2023, Beau Blixseth and George Mack file a Motion to Intervene in the adversary proceeding pending in the United States Bankruptcy Court, District of Nevada. The Motion to Intervene was denied on October 27, 2023.

On August 14, 2024, the Ninth Circuit issued its opinion reversing the lower courts' decision that the Department waived its sovereign immunity. The Ninth Circuit found that under the reasoning found in current precedent, the Department did not waive its

sovereign when it filed an involuntary bankruptcy proceeding against Mr. Blixseth. Mr. Blixseth requested a Petition for Rehearing (*en banc*) which the Ninth Circuit denied on September 30, 2024. The deadline for Mr. Blixseth to file a petition for writ of certiorari with the United States Supreme Court is set for February 27, 2025.

SETTLEMENTS

Southwest Airlines Co.: Southwest Airlines appealed the 2024 assessment of \$11,061,675 for its centrally assessed property to the Department's Office of Dispute Resolution. Following discussions with their representatives and additional review, the Department agreed to an adjusted 2024 market value of \$10,139,420, which was certified to the counties. Southwest Airlines agreed to dismiss its appeal.

United Airlines Holdings, Inc.: United Airlines appealed the 2024 assessment of \$50,405,835 for its centrally assessed property to the Department's Office of Dispute Resolution. Following discussions with their representatives and additional review, the Department agreed to an adjusted 2024 market value of \$47,088,736, which was certified to the counties. United Airlines dismissed its appeal.

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